



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. JUDICIAL REVIEW MISC. APPLN. NO. 26 OF 2020**

IN THE MATTER OF: AN APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW ORDERS OF CERTIORARI, MANDAMUS AND PROHIBITION

AND

IN THE MATTER OF: CONSTITUTIONAL RIGHTS PURSUANT TO ARTICLES 21, 22, 23(1) 23(3) (F), 25 (C), 27, 28, 29, 35, 40, 42, 47(1) & (2), 48, 50(1), 174(A) & (F), 258, 259 & 260 OF THE CONSTITUTION OF KENYA, 2010

AND

IN THE MATTER OF: THE FOURTH SCHEDULE OF THE CONSTITUTION PURSUANT TO PART 2 SECTIONS 3, 7 & 8

AND

IN THE MATTER OF: THE LAW REFORM ACT, SECTION 8 AND 9 CAP 26 LAWS OF KENYA

AND

IN THE MATTER OF: THE FAIR ADMINISTRATIVE ACTION ACT

AND

IN THE MATTER OF: COUNTY GOVERNMENTS ACT

AND

IN THE MATTER OF: COUNTY GOVERNMENT OF MACHAKOS

BETWEEN

**ENDMOR STEEL MILLERS LIMITED .....APPLICANT**

**VERSUS**

**THE COUNTY GOVERNMENT OF MACHAKOS.....RESPONDENT**

**RULING**

**Introduction**

1. The Ex Parte Applicant (*the Applicant*) filed a Chamber Summons Application dated 14<sup>th</sup> July, 2020 seeking for the following orders:

*a) That the Applicant be granted leave to apply for Judicial Review order of certiorari to remove into this Honourable Court and quash the Closure letters dated 13<sup>th</sup> July, 2020 and 14<sup>th</sup> July, 2020 issued by the Respondent through Governor and Ag. Director-Environment & Natural Resources, Machakos County purporting to close down and cease the operations of the Applicant;*

*b) That the Applicant be granted leave to apply for Judicial Review order of mandamus to compel the Respondent to re-issue the*

***Applicant with the Business License for the year 2020;***

***c) That the Applicant be granted leave to apply for Judicial Review order of prohibition to remove into this Honourable Court and prohibit the Respondent from taking any other or further administrative action against the Applicant herein in respect of pollution allegations that form the subject matter of the proceedings in NET 003/2019;***

***d) That the Leave so granted do operate as a stay of the implementation and/or enforcement of the closure letters dated 13<sup>th</sup> July, 2020 and 14<sup>th</sup> July, 2020;***

***e) That the Leave so granted do operate as a stay of taking of any other or further administrative action by the Respondent against the Applicant herein in respect of allegations of pollution that form the subject matter of the proceedings in NET 003/2019;***

***f) That costs of and incidental to the application be provided for;***

***g) That such further and other reliefs that this Honourable Court may deem just and expedient to grant.***

2. The Application is supported by the Applicant's Statutory Statement and the Verifying Affidavit of the Applicant's Director. In his Verifying Affidavit, the Applicant's Director deponed that the Applicant is a private limited liability company incorporated in the year 2008 under the Companies Act and that the Applicant has been carrying out the business of Steel manufacturing on land parcel L.R. No. 12715/211 within Syokimau, Machakos County since the year 2013.

3. The Applicant's Director deponed that there has been an ongoing dispute between the Applicant and a section of residents of Syokimau area as to the operations of the Applicant; that the few disgruntled residents have on previous occasions moved the National Environment Tribunal (NET) to completely stop the operational activities of the Applicant including *NET Appeal No. 194/2016* pitying *Migui Mungai & 2 Others vs. National Environment Management Authority & Endmor Steel Millers Limited* and that the said Appeal was dismissed by the said Tribunal through a Ruling delivered on 10<sup>th</sup> April, 2017.

4. After the collapse of the NET Appeal No. 194/2016, it was deponed that the Appellants in the dismissed Appeal piled pressure upon the National Environment Management Authority to close down the Applicant factory which pressure yielded to the issuance of the Closure Order dated 4<sup>th</sup> January, 2019; that the Applicant herein then moved the National Environment Tribunal through NET Appeal No. 003 of 2019 pitying *Endmor Steel Millers Limited vs. National Environment Management Authority (NEMA)* for conservatory orders and that the Tribunal issued Orders of *status quo* pursuant to the provisions of Section 129 of the Environmental Management and Coordination Act, 2007 (EMCA) thereby authorizing the Applicant to continue operating.

5. According to the Applicant's Director, several other persons made an Application for joinder as Interested Parties in NET Appeal No. 003 of 2019 which Application was premised on the grounds *inter alia*, that the Intended Interested Parties were residents of Syokimau Estate and were affected by the alleged emissions from the Applicant's factory and that the Application for joinder was granted.

6. The Applicant's Director deponed that during the pendency of the proceedings at the Tribunal and at all material times of the operation of the Applicant, the Applicant has carried out scientific and expert analysis of its environmental emissions in line with National Environment Management Authority (NEMA) requirements.

7. The Applicant's Director stated in his Affidavit that scientific and expert analysis Reports included the *Occupational Air Quality measurements Report* released in July, 2019; *Stack Emissions Assessment Report* released on 11<sup>th</sup> July, 2019; *Stack Emissions Assessment Report* released on 17<sup>th</sup> February, 2020; and *Stack Emissions Dispersion Modelling Report* released on 30<sup>th</sup> April, 2020 which were all done by Prof. Anthony Gachanja PhD, a NEMA Registered *Environmental Impact Assessment* Lead Expert and which have so far been filed at the proceedings in the Tribunal.

8. It is the Applicant's case that despite the pendency of the proceedings at the Tribunal, for three (3) days running, on 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> July, 2020, Citizen Television ran a false, reckless, scientifically inept, factually fallacious, malicious and defamatory story in its prime time 7:00pm Kiswahili NIPASHE news program as well as the 9:00pm CITIZEN WEEKEND NEWS bulletin of and concerning the Applicant.

9. The Applicant's Director deponed that the story christened "*#WE CAN'T BREATHE; The Plight of Syokimau residents in the face of air pollution*" has raised unnecessary tension and panic in the area where the said factory is situated thereby inciting the members of the public against the Applicant and that by reason of the publication of the aforesaid false defamatory words by the Citizen Television, the Applicant has attracted unnecessary and clearly undeserved public spite from the public.

10. The Applicant's Director deponed it is keen to note that Nazir Hussein Hakada and John Mutinda Mwanzia, the main interviewees of the story "*#WE CAN'T BREATHE; The Plight of Syokimau residents in the face of air pollution*" are the 1<sup>st</sup> and 3<sup>rd</sup> Interested Parties respectively in NET 003/2019 and are therefore in contempt of the Tribunals proceedings in discussing facts directly in issue in the Appeal.

11. The Applicant's Director deponed that subsequent to the airing of the contemptuous, defamatory and false story, on 13<sup>th</sup> July, 2020, the Governor of the Respondent, in a knee jerk reaction to the story by Citizen Television, gave out a press statement in a live Television appearance issuing a closure order of the Applicant factory by suspending its operating business license and that the oral closure order was then reduced into writing vide a letter dated 13<sup>th</sup> July, 2020 which spelt out certain conditions that must be met by the Applicant before re-opening.

12. According to the Applicant's Director, the Governor of the Respondent gave the reason for the closure of the Applicant's Company as emanating from the findings of an alleged inspection carried out on 26<sup>th</sup> June, 2020 by his Minister for Environment; that there was no such inspection and if any was conducted, then it was not in the Applicant's factory and that the Report of the Inspection allegedly forwarded to the Governor on 2<sup>nd</sup> July, 2020 was never shared with the Applicant.

13. The Applicant's Director deponed that the Report forwarded to the Respondent's Governor was the basis the Respondent used in making an administrative decision/action of closing down the Applicant's Company; that there was no evidence of pollution attributed to the Applicant and that the decision of the Respondent is therefore draconian and malice ridden and flies in the face of Article 47(1) and (2) of the Constitution.

14. It was deponed by the Applicant's Director that it was unreasonable for the Respondent to allege in the letter dated 14<sup>th</sup> July, 2020 that the Applicant was operating without a single business permit contrary to the County Finance Act yet the Applicant has sought for, obtained and paid for the Single Business Permit Bill; that the unreasonable, malicious, unfair and un-procedural action of the Respondent has caused untold suffering to the Applicant as it continues to suffer loss of business as a result of the careless, reckless defamatory articles published by the Defendant and that the Applicant has been thrown into serious financial and contractual quagmire.

15. The Applicant's Director finally deponed that the letters both dated 13<sup>th</sup> July, 2020 and 14<sup>th</sup> July, 2020 are unreasonable as whereas they require the Applicant to fulfill and meet certain conditions before the factory is re-opened, the Respondent has made this impossible by deploying a heavy contingent of County inspectorate to deny anyone ingress to the factory; and that unless this matter is urgently heard and determined, the Applicant's constitutional rights would continue being infringed especially the right to fair administrative action and the right to property.

16. Although the Respondent was served with the Application, it did not file a response. The Application proceeded for hearing by way of written submissions.

### **The Applicant's submissions**

17. The Applicant's counsel submitted that the law for grant of leave to apply for Judicial Review orders and the rationale thereto is settled. Counsel cited the case of *Lady Justice Joyce N. Khaminwa vs. Judicial Service Commission & Another* [2014] eKLR which followed with approval the decisions in *Matiba vs. Attorney General Nairobi H.C. Misc. Application No. 790 of 1993*, *Republic vs. Land Disputes Tribunal Court Central Division and Another Ex Parte Nzioka* [2006] 1 EA 321, and *Republic vs. The P/S Ministry of Planning and National Development Ex Parte Kaimenyi* [2006] 1 EA 353 where it was held as follows:

*"[16] The rationale for the requirement that leave be sought and obtained is to exclude frivolous vexatious or applications which prima facie appear to be abuse of the process of the Court or those applications which are statute barred. However, leave should be granted, if on the material available the court considers, without going into the matter in depth, that there is an arguable case. Leave stage is therefore a filter whose purpose is to weed out hopeless cases at the earliest possible time, thus saving the pressure on the courts and needless expense for the applicant by allowing malicious and futile claims to be weeded out or eliminated so as to prevent public bodies being paralysed for months because of pending court action which might turn out to be unmeritorious."*

18. The Applicant's counsel also cited the case of *In re of John Wacira Wambugu, for Leave to Apply for Orders of Certiorari and Prohibition Directed to the Disciplinary Tribunal of the Law Society of Kenya (LSK)* [2015] eKLR which cited with approval the case of *Re Bivac International SA (Bureau Veritas)* [2005] 2 EA 43 (HCK), in which the court had held:

*"Application for leave to apply for orders of judicial review are normally ex parte and such an application does restrict the Court to threshold issues namely whether the applicant has an arguable case, and whether if leave is granted, the same should operate as a stay. Whereas judicial review remedies are at the end of the day discretionary, that discretion is a judicial discretion and, for this reason a court has to explain how the discretion, if any, was exercised so that all the parties are aware of the factors which led to the exercise of the Court's discretion. There should be an arguable case which without delving into the details could succeed and an arguable case is not ascertained by the court by tossing a coin or waving a magic wand or raising a green flag, the ascertainment of an arguable case is an intellectual exercise in this fast growing area of the law and one has to consider without making any findings, the scope of the judicial review remedy sought, the grounds and the possible principles of administrative law involved and not forget the ever expanding frontiers of judicial review and perhaps give an applicant his day in court instead of denying him.... Although leave should not be granted as a matter of routine, where one is in doubt one has to consider the wise words of Megarry, J in the case of *John vs. Rees* [1970] Ch 345 at 402. In the exercise of the discretion on whether or not to grant stay, the court takes into account the needs of good administration."*

19. It was submitted by counsel that once an Applicant has an arguable case on the materials presented before the court, without going into the matter in depth, the court should grant leave to apply for Judicial Review orders; that Applicant has made an arguable case for grant of leave to apply for Judicial Review orders because it was illegal, procedurally unfair and unreasonable for the Respondent to require that the Applicant (through the Closure letter dated 13<sup>th</sup> July, 2020) to put in place measures to avoid pollution yet at the same time it deployed a heavy contingent of County Inspectorate who denied anyone entry to the factory.

20. The Applicant's counsel submitted that it was illegal, procedurally unfair and wednesday unreasonable for the Respondent to base its closure order dated 13<sup>th</sup> July, 2020 on a non-existent Report pegged on an inspection that was never conducted and that it was illegal, procedurally unfair and unreasonable for the Respondent to ignore the already existing Expert Reports on Air and Stack Emissions as recent as 2020 but proceeded to close down the Applicant's factory on allegations of pollution founded on the airing of the malicious clip by Citizen Television.

21. Counsel submitted that it was illegal, procedurally unfair and unreasonable for the Respondent to purport that it had suspended the Applicants' single business permit only later to write to the Applicant vide the closure letter dated 14<sup>th</sup> July, 2020 that the Applicant was operating without a Single Business Permit and that it was illegal, procedurally unfair and unreasonable for the Respondent to ignore the decisions/orders and the ongoing proceedings at the National Environment Tribunal (NET) OO3/2019 and even dismissed them on the basis that it was not a party in the case.

22. On the issue of the grant of leave to operate as stay, counsel relied on the case of *James Mburu Gitau t/a Jambo Merchant vs. Subcounty Public Health Officer Kiambu County [2013] eKLR* in which Odunga J. held as follows:

*“[8]Some of them are that where the decision sought to be quashed has been implemented leave ought not to operate as stay; that in considering whether the said leave ought to operate as stay of proceedings the court has to be careful in what it state lest it touches on the merits of the main application for Judicial Review, that the objective of granting stay is to ensure that the ex parte Applicants application is not rendered nugatory by the act of Respondents during the pendency of the application, that the purpose of a stay order in judicial review proceeding is to prevent the decision maker from continuing with the decision making process if the decision has not been made and it is not limited to judicial or quasi-judicial proceedings as it encompasses the administrative decision making process being undertaken by public bodies such as a local authority or minister...”*

23. The Applicant's counsel submitted that if the leave sought is not allowed to operate as stay, the Application would be rendered nugatory since the Respondent will proceed to enforce and/or implement the closure letters dated 13<sup>th</sup> July, 2020 and 14<sup>th</sup> July, 2020, which closure orders go against the proceedings in NET 003/2019 which issued stay orders to National Environment Management Authority (NEMA) against closure of the Applicant factory.

24. The Applicant's counsel submitted that the issue of pollution or otherwise by the Applicant is a subject of determination before the Tribunal; that the proceedings at the Tribunal have been ongoing, and will resume on 27<sup>th</sup> July, 2020 and that the Respondent may continue to close down the Applicant's factory indefinitely on mere unfounded and unproven allegations of pollution.

### **Analysis and findings**

25. The current Application was commenced by the Applicant pursuant to the provisions of Section 8 and 9 of the Law Reform Act and Order 53 of the Civil Procedure Rules. In the Application, the Applicant is seeking for leave to apply for Judicial Review order of certiorari to remove into this Honourable Court and quash the Closure letters dated 13<sup>th</sup> July, 2020 and 14<sup>th</sup> July, 2020 issued by the Respondent purporting to close down and cease the operations of the Applicant.

26. The Applicant is also seeking for leave to apply for Judicial Review order of Mandamus to compel the Respondent to re-issue the Applicant with the Business License for the year 2020 and for the Leave so granted to operate as a stay of the implementation and/or enforcement of the Closure letters dated 13<sup>th</sup> July, 2020 and 14<sup>th</sup> July, 2020.

27. Although the Application, by its very nature, is supposed to be argued ex parte, Order 53 Rule 4 of the Civil Procedure Rules provides that where the circumstances so require, the Judge may direct that the Application be served for hearing inter-partes before granting leave. It is on that basis that the court directed the Applicant to serve the Application on the Respondent for hearing inter-partes.

28. The law relating the grant of leave for the commencement of Judicial Review proceedings is now settled. The court in *In re of John Wacira Wambugu, for Leave to Apply for Orders of Certiorari and Prohibition Directed to the Disciplinary Tribunal of the Law Society of Kenya (LSK) [2015] eKLR* cited with approval the case of *Re Bivac International SA (Bureau Veritas) [2005] 2 EA 43 (HCK)*, in which the court held as follows:

*“Application for leave to apply for orders of judicial review are normally ex parte and such an application does restrict the Court to threshold issues namely whether the applicant has an arguable case, and whether if leave is granted, the same should operate as a stay. Whereas judicial review remedies are at the end of the day discretionary, that discretion is a judicial discretion and, for this reason a court has to explain how the discretion, if any, was exercised so that all the parties are aware of the factors which led to the exercise of the Court's discretion. There should be an arguable case which without delving into the details could succeed and an arguable case is not ascertained by the court by tossing a coin or waving a magic wand or raising a green flag, the ascertainment of an arguable case is an intellectual exercise in this fast growing area of the law and one has to consider without making any findings, the scope of the judicial review remedy sought, the grounds and the possible principles of administrative law involved and not forget the ever expanding frontiers of judicial review and perhaps give an applicant his day in court instead of denying him.... Although leave should not be granted as a matter of routine, where one is in doubt one has to consider the wise words of Megarry, J in the case of John vs. Rees [1970] Ch 345.”*

29. The Applicant's case is that during the pendency of the proceedings at the National Environmental Tribunal and at all material times of the operation of the Applicant's factory, the Applicant has carried out scientific and expert analysis of its environmental emissions in line with National Environment Management Authority (NEMA) requirements.

30. According to the Applicant's Director, scientific and expert analysis Reports involving the Applicant's operation included the *Occupational Air Quality measurements Report* released in July, 2019; *Stack Emissions Assessment Report* released on 11<sup>th</sup> July, 2019; *Stack Emissions Assessment Report* released on 17<sup>th</sup> February, 2020; and *Stack Emissions Dispersion Modelling Report* released on 30<sup>th</sup> April, 2020 which were all done by Prof. Anthony Gachanja PhD, a National Environment Management Authority Registered *Environmental Impact Assessment (EIA)* Lead Expert and which have so far been filed at the proceedings in the Tribunal, gave the Plaintiff a clean bill of health.

31. In a knee jerk reaction to the story by Citizen Television, it was deponed, the Governor of Machakos County Government (*the Respondent*) issued a Closure order of the Applicant's factory by suspending its operating business license and that the oral closure order was then reduced into writing vide a letter dated 13<sup>th</sup> July, 2020, which spelt out certain conditions that must be met by the Applicant before re-opening.

32. The Applicant has further complained that the Applicant's factory was closed on the basis of an alleged inspection carried out on 26<sup>th</sup> June, 2020 by the Respondent's Minister for Environment; that there was no such inspection and that the Report of the Inspection allegedly forwarded to the Governor on 2<sup>nd</sup> July, 2020 was never shared with the Applicant.

33. According to the Applicant, that there was no evidence of pollution attributed to the Applicant and that the decision of the Respondent is therefore draconian and malice ridden and flies in the face of Article 47(1) and (2) of the Constitution.

34. The issue of whether indeed the Applicant was heard before the closure of its factory by the Respondent is not a frivolous one. Indeed, the deposition by the Applicant's Director that in view of the proceedings currently before the Tribunal dealing with alleged pollution by the Applicant, the Respondent should not have closed the Applicant's factory shows that the Applicant has an arguable case. That being the case, I find that the Applicant's prayer for leave to commence Judicial Review Application is merited.

35. The next issue for consideration is whether the leave to commence Judicial Review proceedings should operate as a stay of the decision of the Respondent's decision to close the Applicant's factory. The factors to be considered before the court can exercise its discretion as to whether an order of stay should be granted or not in Judicial Review proceedings was addressed by Nyamweya J. in the case of *Munir Sheikh Ahmed vs. Capital Markets Authority [2018] eKLR* as follows:

*"5. The first factor that is relevant is whether or not the decision or action sought to be stayed has been fully implemented, on which there are differing opinions. In George Philip M Wekulo vs. The Law Society of Kenya & Another Kakamega (supra) it was held that if the decision sought to be quashed has been fully implemented leave ought not to operate as a stay, as there is nothing remaining to be stayed. A similar decision was also made in R vs Capital Markets Authority ex parte Joseph Mumo Kivai & Another (supra). According to these decisions, it is only in cases where either the decision has not been implemented or where the same is in the course of implementation that stay may be granted.*

*6. It was thus held in Jared Benson Kangwana vs. Attorney General, Nairobi HCCC No. 446 of 1995 that stay of proceedings should be granted where the situation may result in a decision which ought not to have been made being concluded...*

*9. From the above decisions, it follows that were the action or decision is yet to be implemented, a stay order can normally be granted in such circumstances. Where the action or decision is implemented, then the Court needs to consider the completeness or continuing nature of such implementation. If it is a continuing nature then it is still possible to suspend the implementation. However, once implementation is complete then such discretion to stay should be exercised sparingly, and even then when the Court is sure that the judicial review application can be disposed of in the shortest of time possible."*

36. In the case of *James Mburu Gitau t/a Jambo Merchant vs. Subcounty Public Health Officer Kiambu County [2013] eKLR*, Odunga J. held as follows:

*"[8]Some of them are that where the decision sought to be quashed has been implemented leave ought not to operate as stay; that in considering whether the said leave ought to operate as stay of proceedings the court has to be careful in what it states lest it touches on the merits of the main application for Judicial Review, that the objective of granting stay is to ensure that the ex parte Applicants Application is not rendered nugatory by the act of respondents during the pendency of the application, that the purpose of a stay order in judicial review proceeding is to prevent the decision maker from continuing with the decision making process if the decision has not been made and it is not limited to judicial or quasi-judicial proceedings as it encompasses the administrative decision making process being undertaken by public bodies such as a local authority or minister..."*

37. In the same case, the court stated as follows:

*"[9] It is only where the inherent outcome of the decision challenged is likely to render the success of the judicial review nugatory or an academic exercise that the court would stay the said proceedings. The strength or otherwise of the applicant's case notwithstanding. It must be shown that the probability of a determination being made in the challenged proceedings are high and cannot be said to have been achieved on mere conjecture and speculation. It follows that the stage at which the said proceedings have reached may be crucial in determining whether or not to grant the stay sought though that is not the determinant factor."*

38. From the above pronouncements, it follows that the main consideration in granting a stay order in Judicial Review proceeding is, firstly, whether the action being stayed has been completed or not; secondly, whether the impugned decision is ongoing or not and lastly, whether the challenged decision is likely to render the success of the Judicial Review nugatory or an academic exercise.

39. The Applicant's Director deponed that the Respondent has since withdrawn its business licence on the basis of an alleged report prepared by its officers and that vide a letter dated 13<sup>th</sup> July, 2020, the Respondent ordered for the closure of the Applicant's factory. Indeed, according to the Applicant, its factory is not in operation due to the Respondent's actions.

40. That being the case, it follows that an order of stay of the actions of the Respondent will amount to a mandatory order directing the Respondent to reinstate the Applicant's business licence before hearing the dispute. That, in my view, and considering the circumstances of this case, and the allegations that the Applicant is emitting poisonous gases in the air, should await the hearing of the substantive Notice of Motion.

41. Indeed, an order directing the Respondent to allow the Applicant to re-open its factory at this stage, before hearing the Respondent and any other Interested Party, will be contrary to the Precautionary principle, which is one of the principle that guides this court while dealing with environmental disputes (See Section 18 of the Environment and Land Court Act and Section 3 (5) of Environmental Management and Coordination Act (EMCA)).

42. The Precautionary principle is one of the most popular and commonly applied principles of ecologically sustainable development. The principle is based on Principle 15 of the Rio Declaration on Environment and Development, which states as follows:

*“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.” (Rio Declaration on Environment and Development ,1992).*

43. To the extent that allegations have been raised by the Respondent vide its letter dated 14<sup>th</sup> January, 2020 to the effect that the Applicant’s factory is emitting gases which is affecting the health of the people living in the neighbourhood, the lack of scientific certainty to prove that allegation at this stage is not enough to have the factory opened.

44. Considering that it is the lives of people that are likely to be affected in the event the Respondent’s allegations turn to be true, I would rather err on the side of caution, which is what the precautionary principle is all about, than to order the Respondent to allow the Applicant’s factory to operate at this stage.

45. In the circumstances, the prayer by the Applicant for leave to operate as a stay of the impugned decisions of the Respondent is declined. For those reasons, the Applicant’s Application dated 14<sup>th</sup> July, 2020 is allowed partially as follows:

***a) The Applicant be and is hereby granted leave to apply for Judicial Review order of certiorari to remove into this Honourable Court and quash the Closure letters dated 13<sup>th</sup> July, 2020 and 14<sup>th</sup> July 2020 issued by the Respondent through Governor and Ag. Director-Environment & Natural Resources, Machakos County purporting to close down and cease the operations of the Applicant;***

***b) The Applicant be and is hereby granted leave to apply for Judicial Review order of mandamus to compel the Respondent to re-issue the Applicant with the Business License for the year 2020;***

***c) The Applicant be and is hereby granted leave to apply for Judicial Review order of prohibition to remove into this Honourable Court and prohibit the Respondent from taking any other or further administrative action against the Applicant herein in respect of pollution allegations that form the subject matter of the proceedings in NET 003/2019;***

***d) The prayer for leave to operate as a stay of the Respondent’s aforementioned decisions is denied.***

***e) Costs of the Application to be in the cause.***

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 30<sup>TH</sup> DAY OF JULY, 2020.**

**O.A. ANGOTE**

**JUDGE**